

RELIGION BY FIAT IN ISRAEL

Ben Gurion Tacks Around the Church-State Issue

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AS A veteran of Passover Week in Tel Aviv, this writer can testify at first hand to the intervention of religious rites and practices in the private lives of all persons, pious or infidel, Jew or Gentile, inhabiting the infant State of Israel. Some unhappy unbelievers are ready to maintain that existence could not possibly have been grimmer, short of a renewed outbreak of the Arab war.

The comparison is exaggerated, but it is true enough that the festival of Passover was not exactly as gay as festivals should be, unless one likes that sort of thing. The matzos, that pale, un-nourishing symbol of ancient woe, was omnipresent and unavoidable. There were seven bleak and unleavened days. According to report, bread could be had by non-Jews, but none of my Gentile friends mustered enough energy in that listless week to go out and search for it. A few heathen-minded bakers trafficked in bootlegged bread; toward the end, somebody at dinner one evening produced a chunk, craftily wrapped in newspapers, from underneath the table, and the company fell ravenously upon it. Beer, being notoriously given to rising (or leavening), was also outlawed

throughout the land. Government-sponsored restaurants had to kosherize their eating implements *shel Pesach*, an edict which drove the press corps forth to feed ruinously in high-priced hotel dining rooms because the private concessionaire who runs the correspondents' official mess preferred to go out of business for a week rather than buy new plates, knives, forks, and spoons.

On the first and last Passover days, shops, offices, and factories closed down, and no hand was laid to a plough. Not even Elijah could have goaded back to life the abandoned Kirya, seat of the vacationing government of Israel in its capital of Tel Aviv. Since the holidays fell in the early part of the week, and Friday afternoon and all of Saturday are workless days in Israel anyway, an entire week was effectively lost from the calendar. Impious ones inquired if such was a proper way to do honor to Jehovah, what with a food shortage, a housing shortage, and an overabundance of unabsorbed immigrants threatening the harassed economy of the Holy Land.

TO NULLIFY the risk of having un-Passoverized edibles in circulation, privately-addressed food parcels arriving from America during that week were immobilized at dock or post office until the week was safely over. This Orthodox passion for protecting the dietary morals of the general population goes back to the earliest days of the state, when the Israeli Army was fighting the Arabs inside and on every frontier. Farmhands were scarce, shipping was disrupted, and the food ration was low, but cabinet members from the religious groups consumed much of the Provisional Government's time in vibrant debate against non-kosher meat imports and actually obtained an effective ban on such imports

IN THE history of the West, few problems have been of greater importance than that of the relations between church and state. Now in the Middle East, the new State of Israel faces again, and in somewhat different terms, this burning issue. HAL LEHRMAN's third report from Tel Aviv describes the forms in which the issue has so far appeared in Israel, and the political dilemmas it poses for David Ben Gurion's government and for the various religious groups involved. Mr. Lehrman's earlier reports on the new state ("The Economic Test Facing Israel" and "The Israelis Learn to Govern Themselves") appeared in the June and July issues of COMMENTARY.

by threatening to resign in the middle of a war. (One of these Orthodox statesmen more recently kept a shipload of immigrants an extra night and day offshore by forbidding dockworkers to labor on the Sabbath.) Kosher meat costs more to import, using up more of the state's foreign exchange and more of the housewife's budget, but the rabbinate, naturally, does not put economics ahead of devotion. The army itself is strictly kosher, by military order, not just in the messhall but also in the foxhole. If an officer can afford it, he will buy himself a hot meal where he can, but the ordinary soldier will eat cold food on Saturdays. The famished garrison at the religious kibbutz of Kfar Etzion, later liquidated by the Arabs, slaughtered a cow and, discovering that the meat was not kosher, threw it away.

In the case of Kfar Etzion, the entire community was devout, and the act of abnegation was, therefore, no infringement of personal liberty. But the religious arm does poke into the affairs of non-religious and anti-religious citizens as well, and not merely in such animal matters as eating and drinking (though before leaving the subject of food let it be added that the hog industry, which might have been a source of income to the Treasury and of satisfaction to unorthodox eaters, has been erased by the rabbinically-endorsed assassination of virtually every pig in Israel).

So far as curtailment of public distractions can insure observance of the Sabbath, that holy day is honored willy-nilly by the city-dwellers of Israel. In Haifa most of the bus routes are unserved from sundown Friday to sundown Saturday. In Tel Aviv and Jerusalem the buses are completely immobilized. No stores are open, no theaters, no *divertissements* of any kind. If one desires to violate the Sabbath in the matter of locomotion, one may hire a taxi. But taxis in expensive Israel are not a luxury every man can afford.

In this way it comes to pass that the rich man in the parable may go to perdition in an automobile and ride to Tel Aviv beach on a warm Saturday, but the citizen who is short of piasters must trudge five miles or ten for

a swim on his one day off or else stew at home and remain a virtuous man.

Even more than the non-zealot who resents having his day of rest tinged with blue, the women of modern Israel may chafe at the antique bonds imposed upon them by the theologians. In marriage and divorce, a woman under this country's present statutes is technically as much a chattel as in Biblical times. There is, first of all, no civil marriage in Israel. One marries under the canopy or not at all. This means, for one thing, that Jew cannot marry Gentile here, unless the Gentile turns Jewish or is an alien whose national law authorizes a consular marriage. For another thing, it means that a wife, being subject to rabbinical law, cannot divorce her husband or make a will without his consent. A divorced woman may not marry a *Kohen* (a descendant of the priesthood). A man may have disappeared into a Nazi crematorium, but his widow may not remarry until she convinces the rabbis that he is dead. A childless widow cannot marry anyone except her deceased spouse's brother unless the latter goes through a religious ceremony formally absolving her from this—which sometimes becomes inconvenient if he is a minor or abroad or just plain nasty. Finally, religious courts have entire jurisdiction over alimony and the confirmation of wills.

It is apparent, then, that religious concern for the canonical purity of the Israeli community puts a curb on individual freedom in fields as prosaic as ham and eggs or as sublime as wedlock. Depending on one's point of view, this might be described as intolerable meddling of the "Church" in personal affairs. Explaining the nature of this "meddling," I have deliberately employed the tone of an annoyed or angry man, to reflect the feelings of some of my Israeli friends. But there are religious-minded people here too, and these do not consider the situation monstrous or even extraordinary. In fact, many of them think that life in Israel could be a good deal more Judaic without harming anyone's body or soul.

Their argument rests on various levels.

On the lowest, it uses the *tu quoque* method. In New York State, divorce requires a high hocus-pocus of bogus adultery or other unpleasantnesses, yet we hear no New York Jew lamenting that his individual liberties are thereby stifled. In Ireland nobody can be divorced at all, and the same is true of Catholic Italy. Then why be indignant over rabbinical control of divorce in Israel? The rabbis, at least, will grant a divorce if reasonably convinced that they should. If other countries can impose religious and moral restrictions on personal intimacies, why can't the new State of Israel do likewise? The obvious answer to this, of course, is that the foibles of other lands are not necessarily worthy of imitation. Folly elsewhere does not justify folly in Israel, especially since Israel, being new and making a fresh start, could do better than other states where anachronisms are hedged around by long usage.

We move to stronger ideological ground with the argument that a Jewish civic community has the right to prescribe laws for itself in harmony with Jewish custom. This view maintains that, whatever the former religious significance of certain customs, they have become national and social in observance. Judaic practice, it is contended, is not religious in connotation but traditional. The practice is part of the warp and woof of the people. It is a device to protect and preserve the integrity of that people according to its own lights.

In other societies, there is the same sort of protective custom, arbitrarily established at the outset. So, for instance, most communities recognize a ban on marriage between brother and sister, though this is an artificially-imposed taboo, not something inevitable and inescapable by physical circumstance. There are also contemporary examples of restrictive custom, such as the fiat against American fraternization or marriage with German nationals in the earlier phases of the current Occupation. If a limited community like the United States Army has the right to retain its inviolability by arbitrary devices, surely a broad community like Israel, which is a state, may outlaw marriage be-

tween Jew and Gentile, prescribe the conduct of a widow, and do anything else it sees fit for its own integrity. The same reasoning applies to kosher food and respect for the Sabbath. As for foreigners, they conform to the laws of the land in which they are residing. Foreign Jews in Israel must similarly conform to the Jewish law.

Taking the offensive, protagonists of the Judaic way of life will contend that their prescriptions are not only justified but good. They see all manner of social benefits, for example, in the guarantee of a day of rest during which all citizens will really rest. "We want to give the world a model for the Sabbath," one earnest though relatively moderate Orthodox member of the Israeli Parliament told me. "We Jews invented the concept of Sabbath, didn't we? Other religions and peoples have copied it, changing the day, not the fundamental meaning. But their application of the idea has grown faulty. In other countries one-sixth or one-fifth of the population work hard on Sunday in order that their neighbors may have the day off. We want *everybody* to have the day off. Even our own Sabbath is unfair to the taxi-drivers and others who go on working. A man has the right to spend one day of the week at peace inside his home, surrounded by his wife and children. It isn't sufficient to give him some other day in the week. He is entitled to the day when his children are not at school and his wife has no cooking duties. Our Sabbath ought to be extended so that every man in the Jewish state may enjoy it as well as every other man. This would not be a restriction on personal liberty but a contribution to it."

THE highest argument of all is one which relies for its justification, not on the communal blessings of a universal Sabbath and other rites, but on the stern obligation to maintain the continuity of the Jewish tradition. This is a duty with two objectives. The first is negative: to prevent in a Jewish state the sensation of alienism which has been the age-old burden of the Jews in non-Jewish society. After two thousand years of discrim-

ination and ostracism because of his essential difference, the Jew has earned the right not to feel different in a state where he is sovereign. That is why, when there is a scarcity of foreign exchange, the imported food must be kosher, so that no good Jew may have to do without kosher meat while his godless neighbor contents himself with pork. That is why, also, the kitchens in the army, the hospitals, and all other government establishments must be kosher. Would it not be intolerable to set up a kind of ghetto messhall to which the Orthodox soldier would have to repair apart from his comrades? This is the army of the Jew and the land of the Jew, and at least in the public institutions which his current taxes and his millenia of cruel sacrifice have helped create he deserves to feel like a whole man at last.

The second objective in preserving the Jewish tradition is positive, aggressive, and, by intention, constructive. For centuries, it is held, Judaism has been on the defensive. Fighting for survival against a host of enemies, it has had to content itself with existing rather than growing. In the past several hundred years it has foregone altogether the impulse to create. But now, under a roof of its own, it has finally won the power and the possibility to expand. Under present circumstances, growth is no longer a mere impulse but a solemn obligation. Here now is the occasion to apply the long frustrated tenets of Judaism to the shaping of a society based on a Jewish way of life, a community accommodated to the pace and complexion of modern times but infused at the core by the spirit which has given Judaism its peculiar distinction throughout the ages.

This high ideal is the professed purpose of the Religious Bloc, a coalition of Orthodox parties which joined ranks for Israel's first elections last January. In its motivations, the bloc is entirely religious, without economic or political overtones. It unites all factions, from the religious Poale Mizrahi to the earlocked Hasidim of the medieval Mea Shearim quarter in Jerusalem. Its platform, as enunciated by Chief Rabbi Isaac H. Herzog, stipulates that the new state give ex-

pression in its public life, institutions, and political thought to the principles and traditions of Israel's sacred heritage.

Clearly, there can be large debate over the precise nature of this heritage, over which principles can be applied with profit to mod- parts of it are good and which are bad, which Judaic Code would be neither unfeasible ern living and which can be applied only at the price of reaction. The subject is too large for this writer's available space, to say nothing of his competence. For practical purposes, however, resolution of the debate will be achieved by political means rather than philosophical. If the issue ever becomes crucial, it will be fought out over specific legislative and constitutional programs, not in terms of theological tracts. In this connection, it is interesting to note that a special department of the Ministry of Justice is already examining the corpus of traditional Jewish law to see whether and how it may serve as foundation of a basic law for Israel.

THE present laws of Israel are a legacy from the British mandate and the Ottoman Empire. Physically, the fusion of these with Jewish traditional law to form a modernized nor unprecedented. Something of the sort was done when, after the imposition of Roman law on Germanic, Otto von Gierke gave Germany a new Civil Code which was a wedding of Roman and Germanic as adapted by English common law. There are lawyers in Israel capable of arranging a similar match.

Jewish legal doctrine goes beyond the Ten Commandments, the Bible, and the Talmud to the rich treasury of *shallahs*, judgments and annotative literature from the centuries of magistral rabbis and their courts. A characteristic of this tradition is its ethical and moral tone, its insistence on the wholeness of life and the dignity of the individual. This is a mood which might well be borrowed by any modern code. While not absolutely opposed to capital punishment, Jewish justice was very reluctant to apply it. (The Talmud speaks shudderingly of one court which, in a span of seventy years, passed a single sentence of death.) Jewish legal tra-

dition also speaks out against nullification of claims through lapse of time and against acceptance of testimony from disputing parties. Such intellectual principles could be easily and worthily applied in the formulation of an Israeli codex.

Significantly, however, the same tradition which bars a litigant from testifying against his opponent also denies the right of women to bear witness. Rabbinical judges are willing to listen to women in court but not to recognize their testimony as formally valid. This discrimination, inherited from Biblical folkways, gives Jewish law an Oriental aroma hardly acceptable to modern nostrils. Again, a woman may not inherit under Jewish law. Widows have the right to a specified sum from the deceased husband, and daughters have the right to their dowries, but the sons get the inheritance. This may have made sense in the days of Abraham and Isaac, when wealth meant land and it was the man who worked the land, but it would not go down well in modern times. It certainly did not suit the mandatory government. The British gave rabbinical courts a jurisdiction over maintenance of divorced women and probate of wills but withheld jurisdiction over other questions of personal status, such as inheritance and succession, unless all parties involved were willing. The Israeli government has adopted an identical procedure and has steadily resisted rabbinical pressure to extend the authority of the religious courts over personal status.

Even such differences can conceivably be overcome by good will. The rabbinate right now is evolving a formula to abolish discrimination against women, with strong hope of persuading the Ministry of Justice to increase the scope of rabbinical jurisdiction thereafter. But an insuperable obstacle to a corpus of Mosaic-inspired law would arise if a diehard rabbinate should insist that such a code be holy and unalterable. It might be possible to write a code acceptable both to rabbi and layman and then secure its passage through Parliament. But neither the country nor the Knesset, as presently constituted, would agree to recognizing it as sacred

writ, or as anything but a body of rules which men have written and which men may therefore revise.

THERE is little likelihood, however, that any fundamental discussion of a Judaic Code or of the church-state problem will occur for a substantial time to come. Such discussion would be too hazardous at this juncture, when Israel needs maximum unity for more urgent matters. The extent of this danger showed itself when a draft Constitution was published by Dr. Leo Kohn, an expert on constitutional law serving now in the Israeli Foreign Office. Agudath Israel pounced on Kohn for failing to affirm that the constitution should be founded on the Torah; the Marxist Mapam pummeled him for giving thanks to Almighty God, for including religious courts in the permanent structure of the state, and for suggesting that legislation should "be guided by the basic principles of Jewish law." Since then, little has been heard officially of the learned doctor's paper, and all signs indicate that the Israeli government intends to proceed indefinitely without any constitution at all.

As long as the issue is not pushed forward, it is safe to predict that the country will avoid any serious bitterness over religious infringement of private liberties or, conversely, over failure to establish a theocratic state. As always, there are a certain number of fanatics. Some fellow-travelers, outdoing the Kremlin, talk as if the Sabbath were a criminal offense. On the other hand, I have seen bearded patriarchs parading inside sandwich-man signs which excoriated Sabbath smokers, and in the more fervent districts of Jerusalem drivers have been pulled from government vehicles for daring to ride on the day of rest. But these are infrequent aberrations. Generally, both sides of public opinion are willing to live and let live.

Indeed, considering how many centuries the Orthodox have been painfully awaiting their hour of fulfillment, it might even be argued that they are showing admirable tolerance now that the prophecy has been vindicated and Israel redeemed. Things happen

quietly every day in Israel which would be regarded as execrable abominations if religion were really in power. On Seder night at the kibbutz of Givat Brenner, to cite one instance, there was yeast in the cake, a brass band, and a Haggadah rewritten to include the history of the colony; at some kibbutzim the Israeli Declaration of Independence was part of the recitative.

The other side has been at least as tolerant. On the two matters of ritual where disagreement might have been gravest—circumcision and the Sabbath—hygienic and social considerations have happily assisted an amicable attitude toward the religious position. Easy identification of the Sabbath and other rabbinical requirements with tradition and patriotism has also smoothed the way. Jewish history, interwoven with ancient Hebrew rites and customs, exerts a strong pull on the sentiments of the Israeli in the street and his representatives in Parliament. Last Spring, when the date for the first anniversary of Independence Day was being selected, a suggestion to stand by the Gregorian calendar and celebrate on May 14th was shouted down from all sides of the Knesset. The fifth day of Iyar, which fell on May 14 in 1948 but on May 4 this year, was triumphantly carried. There is nothing particularly holy about the calendar of the Hebrews, but Parliament's loyalty to it is symptomatic.

THE government of David Ben Gurion has been steering a careful middle course through the theological sea. The route is fixed by the manner in which that government was formed and by the nature of the political coalition on which the government's existence depends.

The Ben Gurion cabinet is composed of seven Mapainiks, from the Premier's own moderate Socialist party, three members of the Religious Bloc, one bourgeois Progressive, and one Sephardic representative. This heterogeneous collection has only one reason for hanging together: its common agreement to postpone basic social dispute until Israel's present foreign and domestic crises have been weathered. Mapai has forty-six seats in Par-

liament—fifteen short of a majority. But the Mapai-led government does have a majority, thanks to the sixteen seats of the Religious Bloc. Arrayed against the coalition are mainly the fourteen votes of Menachem Beigin's ex-Irgunist Herut Party and the nineteen votes of Mapam, where the ultra-left wing of Israeli socialism dwells. The four seats of the Communists and the seven of the conservative General Zionists cannot exert decisive influence; Herut is too sore over old and new grievances to be conciliated and too far to the Right to be anything but an opponent; but Mapam is closest to Mapai in socialist ideology and therefore its most dangerous competitor for working-class support, especially since it is the second largest party in the country.

The normal coalition would have been Mapai-Mapam. But Ben Gurion was reluctant to continue his collaboration in the previous Provisional Government with an extremist, pro-Soviet Mapam, and the latter helped him resist by demanding, as its price for entry into the new government, almost as much power as it could have claimed if it had won the elections. Ben Gurion turned to the one alternative which could relieve him from dependence on Mapam—a union with the Religious Bloc. The Sephardic and Progressive groups were brought in to give the coalition a broader base and nine more seats. But it was the sixteen Orthodox votes which were essential. The terms of the contract were and remain a minimally controversial program of national defense and development, and a strict maintenance of the status quo on everything else, in particular on the fundamental structure of the country. The Religious Bloc won three places in the cabinet and a promise that Caesar in Israel would take virtually nothing which had not been his under the Mandate. Mapai won security from its embarrassing Socialist cousins on the Left. Both partners in the coalition gave up—for the duration of their marriage—the right to wage crusades for Israel's salvation either by divine intercession or by Karl Marx.

Ben Gurion means to hold off an atomiz-

ing squabble over fundamental issues as long as there is a hostile Arab world and a vast economic crisis to confront. This is the key to his policy on the church-state problem. His status-quo pact with the Orthodox clarifies everything he has conceded or failed to concede to the rabbis. Defending the continuation from the Mandate of religious jurisdiction over certain phases of personal status, he told critics in the Knesset that tampering with these rights would mean "tearing at the roots of the Jewish soul." He also declared blandly that a man could eat kosher meat without pain and could love his wife and have children even though married under the *chupeh*—but he declined to outlaw civil marriage in the government program or ban non-kosher meat by decree. One of the first acts of the new Israel proclaimed the Sabbath and other religious holidays as days of rest—but deliberately omitted to define what "rest" meant and how it was to be observed. Throughout, the emphasis has been on administrative action rather than on the writing of basic laws for religious privilege. Wherever feasible, the practice of Israel has patterned itself on procedure handed along by the Mandate.

Thus, the busses do not run in Tel Aviv and Jerusalem on Saturday because they did not run in the time of the British, and in Haifa some of the busses run because that also is what they did before Israel became a state. Stores are closed on the Sabbath by *municipal* ordinance, just as they were under the mandate, and not by governmental statute. Ham is kept out of the country not by formal prohibition but by quiet instructions to the appropriate officials that foreign exchange should not be made available for its import. On the other hand, though the post-offices in Tel Aviv are shut on Saturday, it is no longer necessary to trek to heathen Jaffa to make a telephone call or send a telegram. The Ben Gurion attitude has consistently been that sweet reason must prevail—at least until a strong and solidified Israel may permit itself the pleasure of wrangling over the number of angels who can dance on the point of a pin.

AS OF now, the Religious Bloc seems content to abide by this truce on disputation. Privately, it professes to believe that its strength among the voters is much greater than the last elections would suggest. It argues that many men with ardent religious conviction voted for the parties of Right and Center and even for Mapai. This is undoubtedly true. The religious issue not having been sharply drawn in the elections, a substantial number of voters made their choice on the basis of purely secular political considerations and voted for other groups. These votes were not necessarily against religion, and many of them may swing over behind Orthodoxy if a *Kulturkampf* flares up. Even in hasidic Jerusalem, there were many who chose Ben Gurion's party simply because it had demonstrated its capacity for government by successfully feeding the Holy City during the siege. This trend was not obstructed by the Premier's shrewd move in turning over control of food import licenses to the Ministry of Religious Affairs shortly before the elections, thereby clinching his reputation for piety among the devout.

But the Orthodox groups are also aware that the present coalition gives them advantages they would not enjoy if they had to rely entirely on their own registered voting strength. They know, too, that many Mapainiks are already fretting over the concessions to religion. The coalition might conceivably split if the Orthodox strove loudly for more. In that event, a Mapai union with the anti-religious Mapam might ensue, which is probably the last thing in the world the religious factions want. As a result, the Bloc is biding its time. It has yielded its dream of a Mosaic Israel for now—but not forever.

THE time for that will be closer, the Orthodox feel, when the massive immigration today underway is summoned to express its views at the next general elections some four years hence. The Bloc expects strong support from the new East European arrivals, less likely than their predecessors to be ideological, socializing Zionists and more likely to be plain, traditional Jews. It counts even

more on the flood from North Africa, the Middle East, and far corners of the globe like Yemen in southern Arabia. Hardly distinguishable to the western eye from Arabs either in dress, speech, or hygiene, most of these "Oriental" Jews have for centuries had little beyond their religion to comfort them and set them apart. I have seen Yemenites in Aden, down at the nethermost tip of the Arabian peninsula, walk barefoot to their synagogues and chant their inbred hymns with a fervor approaching the ecstatic before boarding planes chartered by the American Joint Distribution Committee for a "magic carpet" flight to Israel. Such material, if the Religious Bloc can organize it, may swell the Orthodox total visibly the next time the ballots are counted.

The disrupting *Kulturkampf* which Ben Gurion wisely dreads is by no means imminent or inevitable. Israel can keep busy for years without encountering the need for a final settlement between church and state. But the elements of a first-class row on the subject are decidedly present. If the religious groups grow too strong, they will need great statesmanship to avoid betraying their impatience for a greater measure of theocracy

than is now in vogue. The one thing which is sure is that the free-thinkers, and those who worship Zion as a national rather than doctrinal creed, will rise vigorously to any challenge from the Old Testamenters.

The warning has been unmistakably struck in the memoirs of Chaim Weizmann. "Whereas the State will treat with the highest respect the true religious feeling of the Community," Israel's first President writes, "it cannot put the clock back by making religion the cardinal principle in the conduct of the State. Religion should be relegated to the synagogue and the homes of those families that want it; it should occupy a special position in the schools; but it shall not control the ministries of state. I have never feared really religious people. . . . It is the new, secularized type of rabbi . . . who is the menace, and who will make a heavy bid for power." This is either too hard or too easy on many religious leaders who, if they ever make that "bid for power," will do so less for themselves than for what they believe zealously to be the glorification of Jehovah and His people. But when and if they do, they will stir up a conflict which will resound throughout world Jewry.